



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Mark Brown,
City of Plainfield, Department of
Public Works

CSC Docket No. 2021-1521

Reconsideration

ISSUED: JULY 2, 2021 (BW)

Mark Brown, a Tree Maintenance Worker with the City of Plainfield, Department of Public Works (Plainfield), requests reconsideration of the dismissal of the appeal of his demotion, based on his failure to appear at an December 22, 2020 settlement conference at the Office of Administrative Law (OAL).

The pertinent facts of this matter are as follows: The petitioner was demoted to Laborer 1 on charges of incompetency, inefficiency or failure to perform duties; conduct unbecoming a public employee and other sufficient cause. The petitioner appealed this action to the Civil Service Commission (Commission) which transmitted the matter to the OAL. The OAL scheduled a settlement conference on December 22, 2020 and sent notice to the petitioner on December 1, 2020. On the scheduled date of the conference, the petitioner did not call into the conference. The OAL issued a "Failure to Appear" notice dated March 6, 2021, which indicated that the petitioner failed to appear at the scheduled date and time. The notice also advised the parties that any excuse for failure to appear must be mailed to the Commission within 13 days of the date of the notice. At its April 7, 2021 meeting, the Commission noted the dismissal of the petitioner's appeal.

In support of the petitioner's request to reinstate his appeal, he submitted a certification and a sworn statement under oath that he did not receive the conference notice. In this regard, petitioner states that he was never informed or received anything regarding his hearing. He states that he was on vacation in Jamaica from November 20, 2020 to December 21, 2020. He further states that he did not receive a previous letter, email or phone call.

In response, Plainfield, represented by Denise Errico Esmerado, Esq., indicates that the petitioner failed to participate in two status conferences at OAL on November 20, 2020 and December 22, 2020. The second conference was scheduled based on petitioner's availability, after his return from vacation. It notes that petitioner is still a union member and could have asked it to participate in either conference.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error has occurred, or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

The Commission acknowledges the presumption that mail correctly addressed, stamped and mailed is generally received by the party to whom it was addressed. *See SSI Medical Services, Inc. v. State Department of Human Services*, 146 *N.J.* 614 (1996); *Szczesny v. Vasquez*, 71 *N.J. Super.* 347, 354 (App. Div. 1962); *In the Matter of Joseph Bahun*, Docket No. A-1132-00T5F (App. Div. May 21, 2001). It also recognizes that on occasion, such mail never reaches its intended destination. Generally, the Commission is willing to accept that if an individual is prepared to make a statement under oath, understanding all its implications and consequences, then it is proper to permit the presumption of receipt to be overcome. In actuality, there is no other alternative for an individual as it is not possible to prove a negative, *i.e.*, that mail was not received. If the Commission did not accept a sworn statement averring that mail was not received, there would be no remedy at all for individuals who find themselves in this particular situation. *See In the Matter of Neil Nelson* (MSB, decided January 26, 2005).

In this matter, given that the petitioner has provided a certification and a sworn statement under oath indicating that he did not receive the notice of settlement conference, he has successfully rebutted the presumption of mailing. Thus, under the circumstances presented in this matter, to deny the appellant a hearing on the merits of his disciplinary action would be unjust.

ORDER

Therefore, it is ordered that the petitioner's request to reinstate his appeal be granted.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021

Deirdre' L. Webster Cobb

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